

1 document and I do not know where you are going to go with
2 that. But I would really like to see this move into some
3 other territory or else conclude with this witness on your
4 cross-examination.

5 MR. SOUTHMAYD: Thank you, Your Honor.

6 BY MR. SOUTHMAYD:

7 Q Mr. Davis, could you refer to your direct
8 testimony at Page 3? Specifically, about two-thirds of the
9 way down, the sentence starting with: Similarly, local
10 businesses in Kenai... and review that sentence?

11 BY MR. SOUTHMAYD:

12 Q Let me know when you've finished, please?

13 A Yes, I'm done.

14 Q Is it your testimony there that local businesses
15 advertise on Peninsula stations even though your stations
16 have higher ratings in the market than Mr. Becker's?

17 A You want to know why?

18 Q No. Is that your testimony?

19 A Say it again, please?

20 Q I'll restate it. Is it your testimony that your
21 stations have higher ratings than Mr. Becker's in the Kenai,
22 Soldotna market?

23 A Absolutely, always have had.

24 Q Do you know whether Arbitron rates that market?

25 A Arbitron rates the whole Kenai Peninsula. They

1 don't rate that market.

2 Q And isn't that what you told me earlier the market
3 was: the Kenai, Soldotna Peninsula market?

4 A No, Kenai, Soldotna is the central area. The
5 Kenai Peninsula is as big as the three largest states.
6 Arbitron does the whole Kenai Peninsula, not just the
7 central peninsula market. That's my market.

8 Q Well, I'm going to ask you again: Does Arbitron
9 rate the Kenai Peninsula market?

10 A No, not the Kenai Peninsula central market.

11 Q Mr. Davis, correct me if I'm wrong. Didn't I ask
12 you what the radio market was you operated in at the
13 beginning of this testimony?

14 JUDGE SIPPEL: Well, the record will speak for
15 itself. You do not have to -- that is just not going to
16 work.

17 MR. SOUTHMAYD: Your Honor --

18 JUDGE SIPPEL: I am not going to let you put the
19 witness through that.

20 MR. SOUTHMAYD: Your Honor, I would like to tender
21 an exhibit that I would like marked as PCI Exhibit No. 3.

22 JUDGE SIPPEL: How about two? Are you going to
23 move two into evidence?

24 MR. SOUTHMAYD: Could I move two into evidence,
25 please, Your Honor?

1 JUDGE SIPPEL: Objection?

2 MR. SHOOK: No objection.

3 JUDGE SIPPEL: It *is* received in evidence, the
4 document, the 24-page document that has been identified as a
5 July 29, 1998 letter. It is received in evidence at this
6 time as Peninsula's Exhibit 2.

7 (The document referred to,
8 previously marked for
9 identification as Peninsula
10 Communications, Inc. Exhibit
11 2, was received in evidence.)

12 JUDGE SIPPEL: We are now marking Peninsula
13 Exhibit No. 3 for identification.

14 (The document referred to was
15 marked for identification as
16 Peninsula Communications, Inc.
17 Exhibit 3.)

18 MR. SOUTHMAYD: Your Honor, I'm going to approach
19 the Court Reporter and I want to give counsel a copy of the
20 exhibit.

21 JUDGE SIPPEL: This witness has been on the stand
22 for over an hour. Do you have much more to go?

23 MR. SOUTHMAYD: Not on this particular exhibit,
24 Your Honor. I think it's fairly self-explanatory.

25 JUDGE SIPPEL: All right. This is PCI Exhibit 3

1 for identification.

2 BY MR. SOUTHMAYD:

3 Q Mr. Davis, have you ever reviewed the materials
4 that are contained in PCI Exhibit 3?

5 A No.

6 Q Does this appear to be an Arbitron Ratings
7 Information entitled: The 2002 Radio County Coverage for
8 Alaska?

9 A Yes, it does.

10 Q And on Page 5 of the exhibit, is there the title:
11 2002 Radio County Coverage Based on Diaries from 2001 for
12 the County Kenai Peninsula?

13 A Not my market.

14 Q That's not what I asked you, **Mr. Davis**. I said on
15 page --

16 A No. It doesn't appear but that's not my market.

17 JUDGE SIPPEL: Listen to his question.

18 BY MR. SOUTHMAYD:

19 Q On Page 5 of the exhibit, isn't it entitled: 2002
20 Radio County Coverage Based on Diaries from 2001 County
21 Report?

22 A Yes, it is.

23 Q And doesn't it identify the page as being: Alaska
24 County Kenai Peninsula?

25 A Yes, it does

1 Q Does it show that average quarter-hour share for
2 KWW-FM is 26.9?

3 A Yes, it does.

4 Q Does it show the county-rating share for KKIS-FM
5 to be 1.9?

6 A Yes, it does.

7 Q Does it show the average quarter-hour share for
8 KSLD-AM to be 0.4?

9 A Yes.

10 Q Does it show the average quarter-hour share for
11 KWHQ-FM to be 2.2?

12 A Yes, it does.

13 Q Does it show the average quarter-hour share for
14 KSRM-AM to be 2.6?

15 A Yes, it does.

16 Q Isn't it true, Mr. Davis, that all four of your
17 stations, based on the average quarter-hour share shown in
18 this Arbitron ratings information, don't even equal Mr.
19 Becker's KWVV average quarter-hour share?

20 A That's right.

21 Q So how can you testify today, Mr. Davis, that your
22 stations have higher ratings than Mr. Becker's station?

23 MR. SHOOK: Objection, that's not his testimony.

24 BY MR. SOUTHMAYD:

25 Q I'll withdraw it. How can you testify that

1 advertisers --

2 JUDGE SIPPEL: You are reading now from his
3 testimony?

4 MR. SOUTHMAYD: Yes, sir.

5 JUDGE SIPPEL: What page and paragraph?

6 MR. SOUTHMAYD: Page 3, two-thirds of the way down
7 starting with: Similar...

8 BY MR. SOUTHMAYD:

9 Q How can you testify that local businesses in Kenai
10 and Soldotna would often purchase advertising on KWVW and
11 KPEM not because those stations had higher local ratings
12 than KSRM stations, but because peninsula stations reach
13 potential customers via translators that KSRM stations could
14 not reach.

15 JUDGE SIPPEL: Do you understand what he is
16 asking?

17 THE WITNESS: Yeah.

18 JUDGE SIPPEL: Are you on that page on your
19 testimony?

20 THE WITNESS: Yeah. I just don't know how much
21 detail I'm allowed to give.

22 JUDGE SIPPEL: Well, let us see what the question
23 is. First, answer his question yes or no and then you can
24 from there. Have you framed that in a *yes* or no way?

25 MR. SOUTHMAYD: I asked him, Your Honor, if he

1 could explain how he could testify --

2 JUDGE SIPPEL: Then that is how he will do it.

3 THE WITNESS: Yeah, I'd like to explain.

4 JUDGE SIPPEL: What is your explanation? Go right
5 ahead, sir.

6 THE WITNESS: The Arbitron Diary has never been
7 used by my stations. It has never been used by -- as I've
8 testified, I have never seen this display.

9 Mr. Becker and I both purchase the Eastland Market
10 Survey for my market in Kenai and Soldotna. We both pay
11 \$5,000.00 apiece and that's the one the agencies buy. This
12 is a perfect example of why the translators have hurt my
13 radio stations with not having an equal-playing field.

14 The fact of the matter is that the Kenai Peninsula
15 borough includes the cities of Kenai, Soldotna and Greater
16 Kenai, Soldotna, which is my market. Seward is in the
17 borough. I have no listeners in Seward. Becker has all the
18 listeners in Seward. I have no listeners in Homer. He has
19 all the listeners in Homer.

20 I have no listeners in Seldovia, or any of the
21 other cities on the South Kenai Peninsula. Mr. Becker has
22 them all. So when Mr. Becker does a survey in my market
23 with the Eastland Corporation and pays \$5,000.00 for it for
24 a number of years, he gets a true picture of who the
25 listeners are. And my listeners and my stations have always

1 been far more than his. We've never had any trouble. It
2 shows in sales figures and all kinds of figures.

3 When Mr. Becker goes to an agency and shows the
4 peninsula-wide Arbitron survey, it shows that he's far in
5 the lead because the diaries are going to Seward and Homer
6 I get absolutely nothing, zero, and he gets his regular
7 share in Kenai, Soldotna. So, therefore, you have, in fact,
8 many of the agencies have totally quit using Arbitron in our
9 borough, because our borough is as big as the three smallest
10 states in the U.S. of America and my signal does not reach
11 all the borough. It only reaches the Kenai, Soldotna,
12 Greater Kenai, Soldotna area.

13 JUDGE SIPPEL: What *is* a borough? Is that like a
14 county?

15 THE WITNESS: We have boroughs **up** there instead of
16 counties.

17 BY MR. SOUTHMAYD:'

18 Q So, Mr. Davis, would that indicate that the reach
19 of your signals is inferior to the reach of Mr. Becker's
20 signals, in that he reaches a greater area?

21 A With his translators, yes. Without the
22 translators, he doesn't.

23 Q Thank you. Referring again to Page 5 in this
24 exhibit, do you see any ratings listed for Seward, Alaska?

25 A No. This is the whole Kenai Peninsula, Seward,

1 Homer, everywhere.

2 Q Do you see any ratings listed for Homer, Alaska?

3 A No. This is, I read at the top, it's the whole
4 Kenai Peninsula County.

5 Q Do you see any listings for Seldovia, Alaska
6 stations in here?

7 A No. Because it's the Kenai Peninsula County

8 JUDGE SIPPPEL: **well**, it says up on top, it says,
9 Homer -- oh, it says Home Radio, sorry. He said he does not
10 use. He does not refer **to** it and he does not use it.

11 MR. SOUTHMAYD: I understand, Your Honor.

12 BY MR. SOUTHMAYD:

13 Q Mr. Davis, do you deal with national and regional
14 advertising agencies in your business?

15 A Yes, we do.

16 Q Do they use the Arbitron ratings data in making
17 buys, to your knowledge?

18 A Until we explain to them exactly what I explained
19 to you.

20 Q Is the answer to my question yes?

21 A I don't know. I would assume they do, until I
22 explain it.

23 Q Have you ever --

24 A I've never worked for an agency.

25 Q Mr. Davis, as I understand it, you're an

1 experienced broadcaster with 39 years, 30 years experience,
2 more or less in this market?

3 A Thirty-five.

4 Q Are you saying that you have no knowledge whether
5 the advertising agencies with whom you work use Arbitron
6 data in making advertising buys?

7 A I would say advertising agencies nationwide use
8 Arbitron, basically, all the time.

9 Q Do the advertising agencies that buy in your
10 market use the Arbitron data?

11 A I don't know. They do until I explain it.

12 JUDGE SIPPEL: Can we move on from this?

13 MR. SOUTHMAYD: Your Honor, I think this is
14 evasive.

15 JUDGE SIPPEL: You can make that argument in
16 findings, but you are not going to go any further with this
17 with this witness. I don't see -- we are not getting
18 anywhere.

19 Well, anyway, my instruction is to move into
20 another area. Do you want to move this into evidence?

21 MR. SOUTHMAYD: I do, Your Honor, as PCI Exhibit
22 3.

23 JUDGE SIPPEL: All right. Any objection?

24 MR. SHOOK: No objection.

25 JUDGE SIPPEL: PCI 3 for identification is now in

1 evidence as PCI 3. It is 11 o'clock. Unless somebody has
2 an objection, I think maybe we ought to give this witness a
3 break.

4 (The document referred to,
5 previously marked for
6 identification as Peninsula
7 Communications, Inc. Exhibit
8 3, was received in evidence.)

9 MR. SOUTHMAYD: That's fine with me, Your Honor,
10 thank you.

11 JUDGE SIPPEL: Okay, Mr. Davis?

12 THE WITNESS: Sounds great.

13 JUDGE SIPPEL: All right. Let us go off the
14 record.

15 (Whereupon, a short recess was taken.)

16 JUDGE SIPPEL: We are back on the record. Mr.
17 Davis is on the stand. Mr. Southmayd?

18 MR. SOUTHMAYD: Thank you, Your Honor.

19 BY MR. SOUTHMAYD:

20 Q Mr. Davis, have you paid for the publication of
21 newspaper ads in the Kenai, Soldotna market, accusing
22 Peninsula of operating illegal translators?

23 A Yes.

24 Q Have these included full-page newspaper ads?

25 A Not that I know of.

1 Q Mr. Davis, have you been the author, and I'm
2 speaking of you personally, of letters to the Federal
3 Communications Commission, asking that Mr. Becker's
4 translators be terminated from operation?

5 A Yes, sir.

6 Q Have you been the author of letters to members of
7 the Alaska Congressional and Senatorial Delegation, asking
8 that Mr. Becker's translators be terminated from operation?

9 A Yes.

10 Q Are you familiar with the Alaska Broadcaster's
11 Association?

12 A Yes.

13 Q Are you a member?

14 A Yes.

15 Q As a member, are you generally familiar with their
16 activities?

17 A Somewhat.

18 Q Do you know if the Alaska Broadcaster's
19 Association has taken an official position with regard to
20 Mr. Becker's translators?

21 A Yes, I do.

22 Q What is that position?

23 A They wanted an even playing field for all
24 broadcasters in the state.

25 Q Were you involved in having the Alaska

1 Broadcaster's Association take that official position?

2 A No.

3 JUDGE SIPPEL: While you have got your checklist
4 there, do you want to move this PCI 3 into evidence?

5 MR. SOUTHMAYD: I think we did. If we didn't, I'd
6 like to.

7 MR. SHOOK: I had thought we did.

8 JUDGE SIPPEL: All right. If we didn't -- it does
9 not show in my notes. Yes, it does. I take that back. I
10 am sorry. Go ahead.

11 BY MR. SOUTHMAYD:

12 Q Mr. Davis, do you meet with, personally meet with
13 advertisers on your station?

14 A From time to time.

15 Q Do you have, is it your common practice in such
16 meetings to discuss Peninsula's translator situation with
17 your advertisers?

18 A I have requests from my advertisers all the time,
19 wondering what the situation is with Becker's translators.

20 Q What do you tell them?

21 A I tell them whatever the latest FCC releases show,
22 and I also publish it in the paper, so that all of them know
23 exactly.

24 Q Why do you feel it's important -- excuse me, I
25 didn't mean to interrupt you, sir. Go ahead.

1 A I'm fine. I wasn't interrupted.

2 Q Why do you feel it's important and have taken it
3 upon yourself to, as you say, let them all know what's going
4 on with regard to Peninsula's translators?

5 A It's important because the FCC has told him to
6 shut them down and he hasn't. In fact, they completely
7 revoked the licenses.

8 Q Do you feel it's your duty to let everyone know
9 that?

10 A Oh, yes.

11 Q Why?

12 A Because they ask me in my office all the time and
13 when I'm on the street and so we let them know however we
14 can.

15 Q In testifying here today, is it your hope that the
16 Commission revokes Mr. Becker's licenses for his broadcast
17 station?

18 A No. He's a very good competitor. We consider him
19 a good competitor financially. I hope his translators go
20 away.

21 MR. SOUTHMAYD: Thank you. I have no further
22 questions, Your Honor.

23 JUDGE SIPPEL: Redirect, sir?

24 MR. SHOOK: I do. It would involve approaching
25 the witness because it would entail showing him some

1 exhibits.

2 JUDGE SIPPEL: That is fine. On your way up,
3 would you tell us which volumes you are going to be bringing
4 up to him?

5 MR. SHOOK: The Official Notice Exhibits.

6 JUDGE SIPPEL: Fine, please proceed.

7 MR. SHOOK: What I will do is, I can put the
8 binder in front of Mr. Davis and then I can come back to my
9 seat.

10 JUDGE SIPPEL: That would be fine. That would be
11 most appropriate.

12 MR. SOUTHMAYD: Excuse me, Your Honor and counsel.
13 Are we referring to something? I missed that.

14 MR. SHOOK: I have placed a binder of Official
15 Notice Exhibits in front of Mr. Davis and have opened to
16 Official Notice Exhibit 8.

17 MR. SOUTHMAYD: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. SHOOK:

20 Q Now for purposes of my question, Mr. Davis, I
21 think all you need to read from Official Notice Exhibit 8 is
22 the first paragraph.

23 JUDGE SIPPEL: What he is looking at is a letter
24 dated September 11, 1996 to Mr. Southmayd from the FCC.

25 THE WITNESS: I read the first paragraph.

1 BY MR. SHOOK:

2 Q In response to a question from counsel from
3 Peninsula concerning the 1995 translator license renewal
4 applications that had been filed by Peninsula, I believe you
5 indicated in your answer to that question that you did not
6 know whether KSRM, Inc. had filed a petition to deny against
7 those license renewal applications.

8 After having looked at Official Notice Exhibit 8,
9 the first paragraph, does that refresh your recollection as
10 to whether or not KSRM, Inc. filed petitions to deny against
11 those applications?

12 A Yes, my memory is refreshed. And I stated also
13 that I hoped we had, I just didn't remember. I remember
14 now.

15 Q And what is your memory? Was such a petition
16 filed?

17 A Pardon me?

18 Q Was such a petition filed?

19 A Yes.

20 Q I would now direct your attention to Official
21 Notice Exhibit 9. If you could read the first paragraph to
22 yourself, it appears on Page 2 of the exhibit.

23 JUDGE SIPPEL: This is the FCC letter from Ms.
24 Linda Blair dated, it looks like June 17, 1997, consisting
25 of five pages?

1 MR. SHOOK: Yes.

2 (Discussion held off the record.)

3 BY MR. SHOOK:

4 Q Have you read it?

5 A Yes, I have.

6 Q Now I would also direct your attention to Official
7 Notice Exhibit 10, which is the next document. If you could
8 read to yourself basically as much as -- why don't you read
9 the document to yourself, read the entire document?

10 JUDGE SIPPEL: This is a five-page document dated
11 November 6, 1997. Correct?

12 MR. SHOOK: Yes.

13 JUDGE SIPPEL: From Ms. Linda Blair to Mr.
14 Southmayd -- we will go off the record while I read it.

15 (Discussion held off the record.)

16 BY MR. SHOOK:

17 Q My question, Mr. Davis, was whether or not you
18 were looking at Official Notice Exhibit 10?

19 A Yes.

20 Q Okay. Having looked at Official Notice Exhibits 9
21 and 10, you were asked questions by counsel for Peninsula as
22 to whether or not KSRM, Inc. had filed a petition to deny
23 against 1997 assignment applications that had been filed by
24 Peninsula and Coastal to assign translator station licenses
25 from Peninsula to Coastal? Do you recall that?

1 A Yes. I said we should have and we did. Yes.

2 MS. LANCASTER: I'm sorry. I did not get that.

3 THE WITNESS: I said we should have and we did.

4 Yes.

5 BY MR. SHOOK:

6 Q I next direct your attention to Official Notice
7 Exhibit 11. I believe if you read the first paragraph to
8 yourself, it should suffice for purposes of my questions.
9 You were asked for Mr. Southmayd, counsel for Peninsula,
10 whether or not KSRM had filed a petition to deny against the
11 1997 renewal applications for FM translator licenses that
12 had been filed by Peninsula.

13 Now, looking at Official Notice Exhibit 11, does
14 the first paragraph refresh your recollection as to whether
15 KSRM did so?

16 A Yes.

17 Q And you didn't?

18 A Yes.

19 Q Now I would like you to look again at Official
20 Notice Exhibits 10 and 11 or, excuse me, 9 and 10. And, in
21 this case, what I want you to focus on is the addressees of
22 those letters.

23 A Yes.

24 Q You'll notice that one of the three addressees to
25 both letters is David Tillotson?

1 A Yes.

2 Q Do you have any understanding or explanation as to
3 why Mr. Tillotson is noted there as an addressee?

4 A He was probably an attorney for one of the people
5 or something. I don't know. I don't know why he was. He's
6 not my attorney.

7 MR. SHOOK: Your Honor, I have nothing further.

8 JUDGE SIPPEL: Okay. That is it. You are excused
9 as a witness, Mr. Davis.

10 THE WITNESS: Thank you, Your Honor.

11 JUDGE SIPPEL: Have a safe return to Alaska.

12 Do we have another witness?

13 MS. LANCASTER: Your Honor, yes, we have another
14 witness. Based on what I thought was Mr. Southrnayd's
15 representation that he would go to approximately 12:30 that
16 witness went to the cafeteria, but I can go and retrieve her
17 relatively quickly, if you would like me to do that.

18 JUDGE SIPPEL: No. I believe by the time we got
19 her here and got her sworn in and everything, she would have
20 less than 30 minutes on the stand anyway. Why don't we
21 break now for lunch and come back at, say 1:15? Does that
22 make sense? We are in recess for lunch until 1:15. Thank
23 you very much.

24 //

25 //

1 (Whereupon, at 11:50 a.m., the hearing was
2 recessed, to reconvene at 1:25 p.m. this same day, Thursday,
3 September 26, 2002.)

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A F T E R N O O N S E S S I O N

1:25 p.m.

JUDGE SIPPEL: We are all set. You have your next witness, Ms. Lancaster?

MS. LANCASTER: Yes, sir.

JUDGE SIPPEL: And that would be?

MS. LANCASTER: Sheree Brewer.

JUDGE SIPPEL: All right. I want to swear the witness in right now. Ma'am, would you stand and raise your right hand?

Whereupon,

SHEREE L. BREWER

having been duly sworn, was called as a witness and was examined and testified as follows:

JUDGE SIPPEL: Please be seated and state your name and your current address for the record, please?

THE WITNESS: Sheree L. Brewer, 605 Maple Drive, Kenai, Alaska.

JUDGE SIPPEL: Okay. **Ms.** Lancaster?

MS. LANCASTER: **Your** Honor, I would ask that Ms. Brewer's written testimonial statement be marked as an exhibit, so that I can show it **to** her. I believe it would be EB 31?

JUDGE SIPPEL: Thirty-two.

MS. JANCASTER: Thirty-two.

1 JUDGE SIPPEL: **Ms.** Brewer's testimony will be
2 marked as EB 32 for identification.

3 (The document referred to was
4 marked for identification as
5 Enforcement Bureau's Exhibit
6 32.)

7 MS. LANCASTER: If I may approach, excuse me?

8 JUDGE SIPPEL: Watch the wires.

9 MS. LANCASTER: Yes, sir.

10 JUDGE SIPPEL: Okay.

11 DIRECT EXAMINATION

12 BY MS. LANCASTER:

13 Q Ms. Brewer, do you recognize the document that I
14 just handed to you that at the bottom is marked EB 32?

15 A Yes.

16 Q Can you tell the Court what this document is?

17 A This **is** my testimony. I have actually forgot to
18 bring the original signature page, **so** I did sign it once I
19 arrived here.

20 Q So the signature *is* slightly different than the
21 signature that was on the original document that was
22 distributed?

23 A Correct.

24 Q Have you reviewed the document?

25 A I have.

1 Q **Is** it truthful, to the best of your knowledge?

2 A It is.

3 MS. LANCASTER: Your Honor, I would then tender
4 Exhibit 32 and ask that it be accepted into evidence.

5 JUDGE SIPPEL: Mr. Southmayd, do you want to
6 conduct voir dire?

7 MR. SOUTHMAYD: May I have some very brief voir
8 dire, I hope, Your Honor?

9 JUDGE SIPPEL: Let us see how brief. Go ahead,
10 you may proceed.

11 VOIR DIRE EXAMINATION

12 BY MR. SOUTHMAYD:

13 Q Afternoon, Ms. Brewer. On the testimony that was
14 previously distributed, it shows transmission to Richard
15 Codia. Do you know who that is?

16 A I do not.

17 Q Did you execute your testimony on September 9 or
18 September 10, originally?

19 A My original testimony?

20 Q Yes.

21 A The 9th or the 10th, I don't know which day.

22 Q But as submitted here, it's correct?

23 A Correct.

24 Q Thank you.

25 MS. LANCASTER: Your Honor, just for

1 clarification, if I may interject?

2 JUDGE SIPPEL: Yes, ma'am.

3 MS. LANCASTER: The only thing that I did is take
4 this exact same statement with a blank signature line and
5 have her resign her signature. Otherwise, it's the same
6 statement that was previously distributed.

7 JUDGE SIPPEL: Very well. No reason to question
8 that yet.

9 MR. SOUTHMAYD: All right, Your Honor. I'm
10 prepared to make my objections based on my voir dire and
11 Your Honor's previous rulings with the previous witness, Mr.
12 Davis.

13 JUDGE SIPPEL: You may proceed.

14 MR. SOUTHMAYD: Thank you. On Page 1, Paragraph
15 2, halfway down: After he recently turned off Peninsula's
16 translators, David Becker, Peninsula's owner, vowed to
17 continue to litigate his right to turn them back on.

18 As hearsay, I would object.

19 JUDGE SIPPEL: **Who** wants to handle that? Ms.
20 Lancaster?

21 MS. LANCASTER: Yes, sir, I'll handle it. Your
22 Honor, first of all, I believe it's already covered in
23 Exhibit 22 that's been received in evidence as simply a
24 comment on that. Secondly, I believe it's a statement
25 against interest by a party and, therefore, would be an

1 exception to the hearsay rule.

2 JUDGE SIPPEL: Well, 22 of which one of the
3 enforcement --

4 MS. LANCASTER: EB, Enforcement Bureau Exhibits,
5 Your Honor.

6 JUDGE SIPPEL: What is it, **22**?

7 MS. LANCASTER: Yes, sir.

8 JUDGE SIPPEL: Okay. Let me just take a quick
9 look. It is a news release? Where is it reflected in the
10 news release?

11 MS. LANCASTER: If you **look** at the first sentence
12 of the third paragraph, it alludes to the fact that he will
13 continue to fight this FCC decision, Your Honor, and he will
14 eventually have the merits of the case decided.

15 MR. SOUTHMAYD: It does not refer to Mr. Becker in
16 any way. Well, the second paragraph --

17 JUDGE SIPPEL: Well, it says PCI.

18 MS. LANCASTER: This is a news release by
19 Peninsula, Your Honor. I think **Mr.** Becker has already
20 testified that he authored it.

21 JUDGE SIPPEL: Look, I do not think that that does
22 much in terms of raising any kind of a contentious issue, in
23 light **of** what we have here in the record today. **Are you**
24 concerned about the language used? The concept seems to be
25 pretty well established.

1 MR. SOUTHMAYD: Well, I'm concerned that --

2 JUDGE SIPPEL: You do not like the way it was
3 said?

4 MR. SOUTHMAYD: Yes, and I don't think it's
5 accurate. But in the -- towards the goal of moving forward,
6 I'll withdraw my objection and move on.

7 JUDGE SIPPEL: I think that is the better course.
8 Next objection?

9 MR. SOUTHMAYD: Paragraph 5, the bulk of the
10 paragraph, Ms. Brewer's testimony, particularly beginning
11 with: Although it is less expensive to advertise on KSRM,
12 Inc. stations, if an advertiser compares the cost per 1,000
13 listeners, advertisers thought they were getting a better
14 price for advertising with Peninsula, because it was cheaper
15 per spot to advertise on them.

16 I don't think she's competent to testify as to
17 what advertisers, unspecified, thought.

18 JUDGE SIPPEL: Well, I will permit you, if you
19 wish, to voir dire her on that in terms of what is the basis
20 for that, what information does she base that on?

21 BY MR. SOUTHMAYD:

22 Q Ms. Brewer, what information do you have that's
23 the basis for that **assertion**?

24 JUDGE SIPPEL: Do **you** see where he is?

25 THE WITNESS: Right, I see where to **go**.

1 MS. LANCASTER: Excuse me.

2 JUDGE SIPPEL: Yes.

3 MS. LANCASTER: You need to speak up, **Ms.** Brewer,
4 please.

5 THE WITNESS: Okay. That is from speaking
6 directly with the advertising agencies and negotiating with
7 them regularly on the fact that they were considering **us**
8 higher-priced at the time.

9 BY MR. SOUTHMAYD:

10 Q So, by advertisers, you mean advertising agencies?

11 A And advertisers, both.

12 Q Are there specific advertisers that you're
13 referring to?

14 A I handle all national advertising agencies and
15 state advertising agencies within the State of Alaska. I
16 also handle regional direct accounts, Anchorage accounts,
17 accounts outside of the Kenai, Soldotna market.

18 Q And they all thought the same thing? They all
19 thought that they were getting a better price for
20 advertising? I mean, they expressed that to you?

21 A Those are the objections I have to overcome on a
22 regular basis, yes.

23 Q But they all gave you that objection?

24 JUDGE SIPPEL: Well, that is not what the
25 statement says. Now, in all fairness to the witness, it

1 says advertisers. It does not say every advertiser I ever
2 spoke to or anything like that. So, if you want to develop
3 this on cross-examination, that is fine. But, as far as the
4 voir dire is concerned, she is just here to give the basis
5 of the statement. And she has given to me what sounds like
6 a fairly reasonable basis.

7 BY MR. SOUTHMAYD:

8 Q Would it be more accurate, Ms. Brewer, to say some
9 advertisers?

10 A Possibly.

11 JUDGE SIPPEL: Possibly some? Well, we know. We
12 will take it in that context. Certainly, I would not make a
13 finding that every single advertiser thought this, but the
14 substantial number of advertisers. This is the impression
15 that she got from talking to the advertisers and this is
16 what she does for a living. Let's find something else.

17 BY MR. SOUTHMAYD:

18 Q Okay, next, the next sentence: Due to the large
19 geographical area to which its stations broadcast, Peninsula
20 was able to misconstrue that market information to
21 advertisers who did not understand that the Kenai, Soldotna
22 market is the largest listening market.

23 May I ask what her basis **is** for *suggesting that*,
24 what she means by Peninsula is able to misconstrue?

25 A Explaining to the advertisers KSRM, Inc., our

1 areas is the Kenai, Soldotna market. If we are speaking to
2 an advertising agency, say, in New York City, and they are
3 not understanding our market is the Kenai, Soldotna market,
4 they're looking at the Kenai Peninsula market, they are able
5 to add Seward and Homer in there and it looks as though
6 they're covering a larger geographic area.

7 Q What do you mean by misconstrue? Do you mean they
8 misrepresent?

9 A I would say they misrepresent the Kenai, Soldotna
10 market, yes.

11 Q Did you have actual experience with that
12 happening?

13 A By exactly?

14 Q I mean, did you have a specific situation in which
15 Peninsula was able to so misconstrue the market, or is this
16 just what could be done by virtue of --

17 A I daily overcome objections from advertising
18 agencies who do not understand the market.

19 Q Well, may I ask you: Is this the issue regarding
20 **the use of** Arbitron market ratings versus some other market
21 ratings --

22 A What --

23 Q -- in terms of what's the appropriate market
24 information that you're referring to here?

25 A That would **be** that issue, yes.

1 Q So are you saying that by using Arbitron figures,
2 which might support their case greater than misconstruing or
3 misrepresenting what the actual market share is?

4 A We are not considered an Arbitron-rated market.
5 When Arbitron rates us, we are part **of** the TSA of the
6 Anchorage market. There may be only 15 to 30 diaries sent
7 to **the** Kenai Peninsula each year.

8 MR. SOUTHMAYD: Your Honor, I don't think that's
9 any basis to characterize Peninsula as misrepresenting or
10 misconstruing market information. It seems to me that what
11 she's saying is there's a difference of opinion as to what
12 constitutes the market, but that's a different thing than
13 testifying that Peninsula is guilty of misrepresenting the
14 market.

15 MS. LANCASTER: Your Honor, if I might have an
16 opportunity to ask some additional questions to hopefully
17 clarify this a little bit?

18 JUDGE SIPPEL: Yes, you can clarify it, certainly.

19 DIRECT EXAMINATION (RESUMED)

20 BY MS. LANCASTER:

21 Q Ms. Brewer, when you said that you're not an
22 Arbitron-rated market, can you go into **a** little bit further
23 what the difference **between** *the* Arbitron-market survey is
24 versus whatever the survey is that's normally used to rate
25 your market?

1 A Okay. Arbitron, if we contracted with Arbitron to
2 rate our area, they so could. However, the way it is
3 handled right now, we are part of the TSA, total survey
4 area, of the Anchorage market.

5 Q Is there a survey that rates your market?

6 A Yes.

7 Q What **is** that?

8 A That would be Eastland.

9 Q Does Peninsula subscribe or use the Eastland
10 market survey?

11 A They do

12 JUDGE SIPPEL: Go ahead, go ahead.

13 BY MS. LANCASTER:

14 Q When do they use the Eastland market survey and
15 when do they use the Arbitron market survey, then?

16 A I'm not exactly sure when they use which; however,
17 there have been two Eastland surveys in the past.

18 Q Okay. Can you explain what the two surveys are?

19 A There has been a Kenai, Soldotna survey and then a
20 peninsula-wide survey.

21 Q Which is the appropriate survey to use in your
22 market?

23 A The Kenai, Soldotna Central Peninsula survey.

24 Q And which survey, to the best **of** your knowledge,
25 does Peninsula use when soliciting advertisements?

1 A To the best of my knowledge, they use the
2 peninsula-wide one that includes Seward and Homer.

3 Q And the basis for your knowledge that they use
4 that particular survey is what?

5 A That comes from both the advertising agencies and
6 **Mr. Coval.**

7 Q Mr. Coval being whom?

8 A Terry Coval, the sales manager for Peninsula

9 Q So Peninsula's sales manager has told you that
10 they use a peninsula-wide survey rather than the Kenai,
11 Soldotna survey?

12 A In the past, he has said that, yes.

13 MR. SOUTHMAYD: So may I continue?

14 VOIR DIRE EXAMINATION (RESUMED)

15 BY MR. SOUTHMAYD:

16 Q So are you saying, Ms. Brewer, that you use the
17 Eastland survey because you think that more accurately
18 reflects the listenership, whereas Peninsula uses the
19 Arbitron survey because they think that more accurately
20 reflects the listenership?

21 A We both pay for the Eastland survey.

22 Q Do you know that for a fact, that Peninsula pays
23 for that survey?

24 A That he has subscribed to it?

25 Q Currently?

1 A In the past.

2 Q But do you know if he subscribes to it now? Do
3 you know if he subscribes to it now?

4 A This year?

5 Q Yes?

6 A No.

7 Q How about last year?

8 A Last year there were two books. He had
9 commissioned the second book.

10 Q So he's not a current subscriber? He's not a
11 subscriber to the current survey information?

12 A I don't know.

13 Q Are you?

14 A Yes.

15 MR. SOUTHMAYD: Your station? Well, again, I
16 guess the objection is it's vague and doesn't add anything
17 factually to the record, Your Honor.

18 I would note that this happens again at the end of
19 Paragraph 5, where the testimony is: Peninsula was able to
20 misconstrue the ratings information, undercut advertising
21 rates and so forth.

22 So there's a second, again, allegation of misuse
23 or misrepresentation **of ratings information**.

24 JUDGE SIPPEL: I am sorry, where do you see the
25 second reference, at the end of Paragraph 5?

1 MR. SOUTHMAYD: At the end of Paragraph 5, the
2 second to last sentence, beginning --

3 JUDGE SIPPEL: I see, I see, I see. All right.
4 Well, I want to get back to try to get an answer to my
5 question, and that is: Are you basing your statement that
6 Peninsula was able to misconstrue the market share
7 information on the basis of an actual time when it was
8 misconstrued? Or is this because you are saying that
9 because he uses this broader market concept, that he would
10 be able to do that should he choose to do it? Do you
11 understand my question?

12 THE WITNESS: You're asking -- no, I guess I
13 don't.

14 JUDGE SIPPEL: All right.

15 MS. LANCASTER: May I take a --

16 JUDGE SIPPEL: Let us say, if a person has a gun
17 and could shoot a Person A, that does not necessarily mean
18 that he shot Person A Has there been actually any --

19 THE WITNESS: To misconstrue the Kenai, Soldotna
20 market, yes.

21 JUDGE SIPPEL: You have incidents on which that
22 actually happened?

23 THE WITNESS: There's always the inclusion of the
24 Seward and Homer markets when selling to an agency the
25 Kenai, Soldotna market.

1 BY MR. SOUTHMAYD:

2 Q May I ask how you know that, as not an employee of
3 Peninsula Communications?

4 A That's the objections I overcome with the
5 advertising agencies daily.

6 Q So these are objections advertising agencies say
7 to you?

8 A That's correct.

9 Q But you've never heard any Peninsula employees
10 misconstrue to an advertising agency?

11 A Not directly.

12 MR. SOUTHMAYD: So it's hearsay and I ask that it
13 be stricken based on hearsay.

14 JUDGE SIPPEL: Do you want to respond one more
15 time to this, Ms. Lancaster?

16 MS. LANCASTER: Yes, sir.

17 DIRECT EXAMINATION (RESUMED)

18 BY MS. LANCASTER:

19 Q Ms. Brewer, when you say it's the arguments that
20 you get from advertising agencies, you're soliciting
21 business from these advertising agencies. Is that correct?

22 A Correct

23 Q You're trying to **sell** them ads?

24 A Correct.

25 Q And when you say **it's** the objections you get, what